

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MAR 01 2002

JAMES R. LARSEN, CLERK
~~DEPUTY~~
RICHLAND, WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MICHAEL P. CAMPION, on behalf
of themselves and all others
similarly situated;

Plaintiffs,

v.

CREDIT BUREAU SERVICES, INC.
(a Washington corp.), DARLENE
M. BRIGHT and JOHN DOE BRIGHT
(Wife and Husband), THOMAS J.
MILLER and JANE DOE MILLER
(Husband and Wife),

Defendants.

NO. CS-99-0199-EFS

**ORDER GRANTING IN PART AND
DENYING THE PARTIES' CROSS
MOTIONS FOR SUMMARY JUDGMENT,**

On December 19, 2001, the Court heard argument on the parties cross motions for summary judgment. The parties addressed Defendants Credit Bureau Services, Inc., and Darlene M. Bright's Motions for Partial Summary Judgment, (Ct. Rec. 168), Partial Summary Judgment - Actual Damages Under FDCPA, (Ct. Rec. 176), Defendant Credit Bureau Services, Inc.'s Supplemental Motion for Summary Judgment on Net Worth of Credit Bureau Services, (Ct. Rec. 180), and Plaintiff Michael Campion's Class Motion for Partial Summary Judgment, (Ct. Rec. 173). Michael D. Kinkley appeared on behalf of Plaintiffs. Jed W. Morris

1 appeared on behalf of the Credit Bureau Defendants. Terrence J.
2 Cullen appeared on behalf of Defendant Thomas J. Miller. This Order
3 memorializes and supplements the oral rulings of the Court.

4 **I. BACKGROUND**

5 The facts of the case are known to the parties. The Court will
6 not repeat them, as they have been detailed in several of this Court's
7 prior orders. Insofar as facts are necessary to resolve the motions
8 now before the Court, they are stated below. This Court granted in
9 part and denied in part similar cross motions for summary judgment
10 involving the Plaintiff, Michael Campion as an individual, (Ct. Rec.
11 104). Now, the parties seek extend to the class many of the
12 rulings made with respect to the Campion individually. In addition,
13 the parties seek resolution of a number of issues added by the
14 certification of a class.

15 **II. Standard for Summary Judgment**

16 Summary judgment is appropriate if the "pleadings, depositions,
17 answers to interrogatories, and admissions on file, together with the
18 affidavits, if any, show that there is no genuine issue as to any
19 material fact and that the moving party is entitled to judgment as a
20 matter of law." Fed. R. Civ. P. 56(c). When considering a motion for
21 summary judgment, the Court does not weigh the evidence nor assess
22 credibility; rather, "the evidence of the non-movant is to be
23 believed, and all justifiable inferences are to be drawn in his
24 favor." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). A
25 genuine issue for trial exists only if "the evidence is such that a
26 reasonable jury could return a verdict" for the party opposing summary

1 judgment. *Id.* at 248. Thus, issues of fact are not material and do
2 not preclude summary judgment unless they "might affect the outcome of
3 the suit under the governing law." *Id.* There is no genuine issue for
4 trial if the evidence favoring the non-movant is "not significantly
5 probative." *Id.* at 249. This standard supports the policy of the
6 summary judgment rule, "to isolate and dispose of factually
7 unsupported claims or defenses." *Celotex Corp. v. Catrett*, 477 U.S.
8 317, 323-24 (1986).

9 If the party requesting summary judgment demonstrates the absence
10 of a genuine issue of material fact, the party opposing summary
11 judgment "may not rest upon the mere allegations or denials of his
12 pleading, but . . . must set forth specific facts showing that there
13 is a genuine issue for trial" or judgment may be granted as a matter
14 of law. Fed. R. Civ. P. 56(e); *Anderson*, 477 U.S. at 248. Therefore,
15 the burden on the party moving for summary judgment may be met by
16 establishing "that there is an absence of evidence to support the
17 nonmoving party's case." *Celotex*, 477 U.S. at 325.

18 **III. Issues Presented**

19 Defendants Credit Bureasu Services, Inc. ("CBS") and Darlene M.
20 Bright ("Bright") have moved for partial summary judgment: (1)
21 dismissing the state law claims of the Plaintiff class, and (2)
22 finding that net worth for the purposes of statutory damages is based
23 upon book value and not fair market value. (Ct. Rec. 168.) CBS and
24 Bright have also moved for partial summary judgment dismissing the
25 Plaintiff class's claim for actual damages. (Ct. Rec. 176.) Finally,
26

1 CBS has moved for partial summary judgment that its net worth is
2 \$467,251. (Ct. Rec. 180.)

3 Plaintiff Campion has moved, as representative of a class, for
4 partial summary judgment on six individual issues:

- 5 1. the Defendants violated the Fair Debt Collections Practices
6 Act ("FDCPA").
- 7 2. the Defendants should pay one percent (1%) of their net
8 worth as statutory damages.
- 9 3. Defendants CBS and Bright have violated the Washington
10 Consumer Protection Act ("WCPA").
- 11 4. Defendant CBS violated the Washington Collection Agency Act
12 and should be liable for remedies.
- 13 5. Defendants are liable for actual damages to members of the
14 class.
- 15 6. Defendants are liable for damages for the amount garnished
16 in excess of an existing judgment.

17 (Ct. Rec. 173.)

18 **IV. Discussion**

19 A number of the issues on which the parties seek partial summary
20 judgment are either uncontested, or opposed only insofar as opposed in
21 prior rulings. Therefore, summary judgment may be granted on a number
22 of issues without extended analysis. *Cf.* LR 7.1(b) (warning that
23 failure to oppose a motion may be considered as consent to the entry
24 of an adverse order).

25 The Plaintiff class has not opposed CBS and Bright's motion for
26 partial summary judgment that Net worth is based upon book value, (Ct.

1 Rec. 163). As such, Defendants' motion is **granted**. Defendant CBS
2 submitted an affidavit, (Ct. Rec. 182), in support of its Motion for
3 partial summary judgment, (Ct Rec. 180), attesting that its book value
4 is \$467,251. The Plaintiff class responded to CBS's motion by saying
5 "an analysis of the resources of the defendant will be the subject of
6 further proceedings." (Ct. Rec. 185 at 4.) Discovery in this case
7 ended October 8, 2001. (Ct. Rec. 152 at 2 ¶ 5.) FED. R. CIV. P. 56(e)
8 states that: "[w]hen a motion for summary judgment is made and
9 supported as provided in this rule, an adverse party may not rest upon
10 the mere allegations or denials of the adverse party's pleadings. . .
11 . If the adverse party does not so respond, summary judgment, if
12 appropriate, shall be entered against the adverse party." Here,
13 Plaintiff has failed to respond according to Rule 56(e). Therefore,
14 Defendant's motion, is **granted**.

15 In the remaining motions, the Defendant's key contention is that
16 the Plaintiffs have shown no actual damages. If true, Plaintiff's
17 partial motion for summary judgment subpart five, (Ct. Rec. 173), will
18 be denied, and Defendant's motion for partial summary judgment, (Ct.
19 Rec. 176), will be granted. In addition, Plaintiff's state law
20 claims, for violation of the Washington Collection Agency Act ("WCAA")
21 and the Washington Consumer Protection Act ("WCPA") depend on actual
22 damages. The only remedy available to this class for violation of the
23 WCAA is a per se violation of the WCPA. However, to recover damages
24 under the WCPA, a Plaintiff, or a Plaintiff class, must prove actual
25 damages. *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins.*
26 Co., 105 Wash. 2d 778, 780 (1986).

1 Here, the Defendants argue that the Court has only ruled that the
2 Defendants violated the FDCPA by mischaracterizing the amount in the
3 affidavit as being reduced to a judgment when, in fact, the amount
4 included costs and attorney's fees not reduced to a judgment but to
5 which the Defendant was nevertheless entitled. In such circumstances,
6 there can be no actual damages. The Defendant has not collected, or
7 attempted to collect an amount from the class to which it was not
8 entitled. The Plaintiffs have responded that while in the above
9 scenario, there would be no actual damages, the Defendants also filed
10 second and successive affidavits which included the costs and
11 attorney's fees of unsuccessful garnishments. Plaintiffs argue that
12 the Defendants could not collect such amounts, which creates actual
13 damages. Defendants have responded to this argument that it violates
14 the Court's order certifying the class.

15 On March 16, 2001, the Court granted class certification. (Ct.
16 Rec. 144.) In that order, the Court distinguished between two classes
17 sought to be certified:

18 (1) The Affidavit Class, consisting of (i) all persons
19 with addresses in the State of Washington (ii) to whom
20 Defendants sent one or more Affidavit(s) for Writ of
21 Garnishment which are the same or similar to either the
22 affidavit in support of Writ of Garnishment A or the
23 affidavit in support of Writ of Garnishment B (iii)
24 regarding obligations incurred for personal, family, or
25 household purposes (iv) which Affidavit(s) were not returned
26 as undelivered by the Post Office (v) for the period prior

1 to July 13, 1999, the date this action was filed,
2 corresponding to the statute of limitations of the violated
3 statute (one year for the FDCPA; four years for the WCPA and
4 WCAA); and

5 (2) The Collection Without Judgment on Garnishment Answer
6 Class ("Collection Class"), consisting of (i) all persons
7 (ii) from whom Defendants have (a) collected or attempted to
8 collect attorney fees and/or costs claimed by Defendants as
9 incurred for garnishment proceedings under the laws of the
10 State of Washington, or (b) collected or attempted to
11 collect money held by writ of garnishment (iii) without
12 first obtaining a judgment on the garnishment Answer against
13 the garnishee defendant that (a) awards those attorney fees
14 and/or costs against the judgment debtor in favor of the
15 judgment plaintiffs, or (b) awarding funds held by writ to
16 the judgment plaintiffs (iv) in connection with attempts to
17 collect debts incurred for personal, family, or household
18 purposes (v) for the period prior to July 13, 1999, the date
19 this action was filed, corresponding to the statute of
20 limitations of the violated statute (one year for the FDCPA;
21 four years for the WCPA and WCAA).

22 (Ct. Rec. 144 at 10-11.) In that same order, the Court denied class
23 certification of the Collection Class while granting certification of
24 the Affidavit Class.

25 Plaintiffs have met their burden of proving that the
26 Affidavit Class satisfies the requirements of Fed. R. Civ.

1 P. 23(a) and (b)(3) with respect to the following common
2 questions

3 (1) Whether the affidavits sent to the class members in
4 support of writs of garnishment misrepresented the "legal
5 status" of unawarded attorney fees and costs by describing
6 them as "judgment" amounts;

7 (2) Whether the writs concerned obligations incurred
8 for personal, family, or household purposes and not for
9 business purposes;

10 (3) Whether the affidavits were delivered to the debtor
11 class members; and

12 (4) Whether the affidavits were sent within the statute
13 of limitations period for the FDCPA, WPAA and WCPA.

14 (Ct. Rec. 144 at 28.)

15 The above language depicts a statutory damages Affidavit class,
16 not an actual damages Collection class. Therefore, insofar as the
17 Plaintiff class seeks actual damages, their request violates the
18 Court's Order Denying Motion to Dismiss, and Granting in Part and
19 Denying in Part Motion to Strike and Motion for Class Certification,
20 (Ct. Rec. 144). The certified class has no actual damages.

21 Plaintiff's partial motion for summary judgment subpart five, (Ct.
22 Rec. 173), is denied. Defendant's motion for partial summary
23 judgment, (Ct. Rec. 176), is be granted. Defendant's Motion for
24 partial summary judgment dismissing Plaintiff's state law claims, (Ct.
25 Rec. 168), is granted.

1 Based upon the above rulings, the Court can dispose of the rest
2 of Plaintiff's motion for partial summary judgment, (Ct. Rec. 173).
3 Subpart One asks the Court to extend to the class the judgment that
4 the Defendants violated the FDCPA. Defendants oppose this motion by
5 relying on their opposition to Campions's individual motion, only
6 noting that grant should be limited to the certified class. The Court
7 ruled against them there, and does so again. Subpart One is **granted**,
8 insofar as it extends to the Affidavit class. Subpart Two requests
9 judgment that the Defendant should pay one percent of their net worth
10 as statutory damages. Defendants have responded that the one percent
11 figure is the ceiling and not the exact figure. They are correct. 15
12 U.S.C. 1692k(b)(2). Subpart Two is **denied**. Subpart Three seeks
13 extension of the Court's grant of summary judgment that the Defendants
14 violated the WCPA. Again, Defendants oppose this motion by relying on
15 their opposition to Campions's individual motion, only noting that
16 grant should be limited to the certified class. The Court ruled
17 against them there, and does so again. Subpart Three is **granted**,
18 insofar as it extends to the Affidavit class. Subpart Four seeks
19 extension of the Court's grant of summary judgment that the Defendants
20 violated the WCAA. Defendants oppose this motion by relying on their
21 opposition to Campion's individual motion. Subpart Four is **granted**,
22 insofar as not inconsistent with the Court's ruling on actual damages.
23 Subparts Five and Six seeks summary judgment awarding actual
24 damages to the Plaintiff class. Above, the Court ruled that the class
25 certified does not include actual damages. Therefore, these subparts
26 are **denied**.

1 Accordingly, for the reasons set forth herein,

2 **IT IS HEREBY ORDERED:**

3 1. Defendants Credit Bureau Services, Inc., and Darlene Bright's
4 Motion for Partial Summary Judgment, (**Ct. Rec. 168**), is **GRANTED**.

5 2. Plaintiff's Motion for Partial Summary Judgment, (**Ct. Rec.**
6 **173**), is **GRANTED in part** and **DENIED in part**, as is set forth above.

7 3. Defendants Credit Bureau Services, Inc., Darlene Bright's
8 Motion Partial Summary Judgment - Actual Damages Under FDCPA, (**Ct.**
9 **Rec. 176**), is **GRANTED**.

10 4. Defendants Credit Bureau Services, Inc.'s Supplemental Motion
11 for Summary Judgment on Net Worth of Credit Bureau Services (**Ct. Rec.**
12 **180**), is **GRANTED**.

13 **IT IS SO ORDERED.** The District Court Executive is directed to:

14 A. Enter this Order;

15 B. Provide copies of this Order to counsel; and

16 **DATED** this 18th day of March 2002.


17
18 EDWARD F. SHEA
19 United States District Judge

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